



POLICE DEPARTMENT CITY OF NEW YORK

September 14, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Timi Tomacruz
Tax Registry No. 947545
Brooklyn Court Section
Disciplinary Case No. 2014-12722

Charges and Specifications:

1. Said Police Officer Timi Tomacruz, assigned to the 20th Precinct, on or about May 18, 2014, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer did, during a verbal argument with Police Officer Person A, Tax No. 932037, point said Police Officer's firearm at her. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT, GENERAL REGULATIONS
2. Said Police Officer Timi Tomacruz, assigned to the 20th Precinct, on or about June 20, 2014, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer did kick Police Officer Person A, Tax No. 932037, in her ribs.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT, GENERAL REGULATIONS
3. Said Police Officer Timi Tomacruz, assigned to the 20th Precinct, on or about November 11, 2014, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer, during a verbal argument with Police Officer Person A, Tax No. 932037, did grab Police Officer Person A's arm and then pushed, grabbed and slapped Police Officer Person A's face.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT, GENERAL REGULATIONS
4. Said Police Officer Timi Tomacruz, assigned to the Brooklyn Court Section, on or about and between March 30, 2015 and April 10, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer attempted to influence the testimony to be provided by a complainant, a Member of Service, during said complainant's Departmental

interview, in that he told the complainant what he told Departmental Investigators and told said complainant to corroborate his account. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 –PUBLIC CONTACT –PROHIBITED
CONDUCT, GENERAL REGULATIONS

Appearances:

For the Department: Rachel Grinspan, Esq.
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For Respondent: Howard Tanner, Esq.
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Hearing Dates:

June 27 & 28, 2016, July 22, 2016

Decision:

Specifications 1 and 2: Guilty
Specifications 3 and 4: Not Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 27, June 28, and July 22, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Person A, retired Police Officer Diane Dyal, and Sergeant Leiann Cummings as witnesses. Respondent called Police Officer Mechea Medine and Christine Viola-Golbig as witnesses, and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent guilty of Specifications 1 and 2, and not guilty of Specifications 3 and 4.

FINDINGS AND ANALYSIS

This case involves two members of the service who were previously involved in a relationship and have a child in common. It is alleged by Officer Person A that on three separate occasions she was the victim of misconduct at the hands of Respondent, and that afterward Respondent attempted to influence her statement to the Department regarding what had transpired between them. According to Officer Person A's testimony, her last contact with Respondent was 18 days before the start of trial, and they no longer are in a relationship. Officer Person A, herself, was modified for her failure to notify the Department about these alleged domestic violence incidents.

The first alleged incident occurred on May 18, 2014. Officer Person A testified that she was at a Greek café in Astoria with Respondent, with whom she had been in a relationship since September, 2011. Officer Person A acknowledged that she had been drinking alcohol and was intoxicated. (Tr. 82) As they were leaving the restaurant, her dress caught on her heel and she fell down the steps, causing bleeding to her legs. Respondent helped her to the driver's seat of her car, then went to get paper towels and alcohol to wipe the wounds. Upon his return they started arguing, since Respondent felt that the accident could have been avoided if she had held his hand on the staircase. Officer Person A told him it didn't matter, since she probably would have fallen anyway. According to Officer Person A, Respondent threw the paper towels at her, choked her, and

then pulled his firearm and pointed it at her face, threatening to kill her and himself. (Tr. 29-30, 84-88) She claimed the choking left a mark, but she took no photographs to memorialize this contention. A passerby knocked on the car window to see if they were okay; Officer Person A did not respond, but Respondent told him yes and to keep moving. After putting his firearm away, Respondent kissed Officer Person A and apologized, insisting that he would go to therapy and anger management classes. (Tr. 30, 89) Officer Person A drove them back to her apartment, even though she had been drinking. She allowed Respondent into her home and did not ask him to leave, despite what she claimed had just transpired. (Tr. 94-95)

Officer Person A acknowledged that she did not initially report this incident. She explained that Respondent had apologized and assured her that he would get help for his problem, and she believed him. When she did speak with the Department in November 2014, she estimated that this incident occurred on June 14, 2014 rather than May 18. Sometime in April, 2016, she gave further thought to the timing of the incident and checked old Facebook postings to help pin down the precise date. Based on one such posting (Resp. Ex. A), she determined that the correct date was May 18; that posting includes a photograph showing her in high heels with cuts on her leg, though there is no evidence of a dress in that photograph. (Tr. 31-33, 70, 74)

Officer Person A testified regarding the second incident, which occurred on June 20, 2014. She and Respondent were arguing via texts over Respondent's relationship with another woman, Officer Mechea Medine. Officer Person A was upset and intoxicated and drove to Respondent's home, on the second floor of a private house, where they continued the argument in person. According to Officer Person A, Respondent grabbed her

by the throat, threw her on the couch and choked her, then threw her to the floor and choked her some more. While Officer Person A was on the floor, Respondent stood up and kicked her in the right rib cage while he was wearing shoes. (Tr. 33-34, 99-100, 103-108, 117-118)

Fearing for her life, she grabbed a mini-axe he kept in his apartment and threw it at Respondent, striking him in the arm and causing bleeding. (Tr. 34, 110, 115, 119) Officer Person A claimed that the axe was only partially covered by its sheath, though at her March 30, 2015 GO-15 she stated that she couldn't say whether the axe was covered. (Tr. 119-121) The axe and sheath are clearly depicted in several photographs admitted into evidence (Resp. Ex's B, E, and F). Officer Person A eventually persuaded a reluctant Respondent to go to Elmhurst Hospital for his arm wound, and she accompanied him there before he insisted that she leave. (Tr. 34, 121)

Four days after the incident, Officer Person A went to New York-Presbyterian Hospital for the rib injuries she sustained from Respondent having kicked her. On the way to the hospital, she called Respondent to apologize for having gone to his house on June 20. (Tr. 126) The hospital records (Resp. Ex. C) indicate that she felt a crack in her ribs; the diagnosis was a rib contusion, with no rib fracture identified. According to the records, Officer Person A claimed she suffered the injury from slipping in the bathtub, and she reported the same to the Department. Officer Person A explained that she was embarrassed by what happened, and that she didn't want her or Respondent to get in departmental trouble for the incident. She was out of work for 21 days as a result of this injury. (Tr. 35-36, 127, 130)

The third alleged incident occurred on November 11, 2014. Officer Person A testified that she and Respondent were at his residence planning to watch a movie when they got into an argument over the broken PlayStation. While Officer Person A, who was intoxicated, was lying on the bed, Respondent grabbed a glass of wine from her hand, told her to leave, and pushed her. Officer Person A testified that after she told him not to touch her anymore, Respondent grabbed her by the throat and threw her to the floor. She stood up, and he threw her on the bed and started to choke her; at her March 30, 2015 GO-15 interview, however, Officer Person A provided a different sequence of events, saying he first threw her on the bed and then the floor. When she screamed, Respondent put his hand to her mouth and told her to shut up, scratching Officer Person A's face in the process. Respondent apologized to Officer Person A, again assuring her that he was going to get the appropriate counseling to address his behavior. (Tr. 36-37, 133-140) They left together and went to Officer Person A's home. (Tr. 146) Officer Person A took a photograph of her injury (Dept. Ex. 1), showing what she agreed was a superficial scratch mark on the left side of her face that quickly faded away. (Tr. 143)

At work nine days after this third incident, Officer Person A was in the precinct locker room talking with a long-time friend, Officer Diane Dyal (who has since retired). Officer Person A told Officer Dyal about the November 11 incident with Respondent. Although Officer Person A urged Officer Dyal not to report it to the Department, Officer Dyal did inform Sergeant Leiann Cummings, which effectively ended the officers' friendship. (Tr. 42-43)

Officer Person A's first GO-15 interview regarding these incidents was on March 30, 2015. Officer Person A testified that earlier that day, Respondent called her from a

payphone, telling her what account he had given to the Department, and instructing Officer Person A to conform her description of events accordingly. Specifically, he told her to say that during the second incident, she threw the axe but missed him, and that he then picked up the axe and accidentally cut himself while swinging it around. Regarding the first incident, he told her to state that he displayed his firearm, racked the slide and then holstered the gun. In order to protect Respondent, Officer Person A did not mention this phone call during her GO 15 later that day, but did discuss it when questioned in her subsequent GO-15 on May 7, 2015. (Tr. 44, 158-161) She also presented copies of texts sent to her by Respondent in April 2015 (Dept. Ex. 2). In those texts, which were part of a conversation about an ACS investigation, he reminds her that he saved her from a felony arrest by not reporting what really happened during the axe-throwing incident.

Officer Person A acknowledged that she had an alcohol problem during the timeframe covered by these incidents. She was drinking at the time they met in September, 2011, and her consumption of alcohol escalated in 2014. (Tr. 70) Officer Person A, who described herself as a recovering alcoholic, was in and out of rehab. At one point in February, 2015, she checked herself out of a 28-day rehab program after just one night, and called Respondent to pick her up. (Tr. 28, 64, 168-169) She admitted that her drinking affected her recollection of events, and contributed to her initially providing an incorrect date for the first incident with Respondent. The fall she took during that first incident was not the only one she had taken while intoxicated. (Tr. 76) Also, on one occasion she broke the chain lock to Respondent's apartment door, and later bought him a new chain. (Tr. 178)

Both Officer Dyal and Sergeant Cummings testified, corroborating the "outcry" of Officer Person A on November 20. Officer Dyal testified that Officer Person A was crying as she related the details of an argument between her and Respondent on some unspecified date. Officer Person A showed Officer Dyal what appeared to be fresh scratch marks on her back, but did not specify when that had happened. Officer Dyal then informed their sergeant of the conversation. (Tr. 184, 187, 190) Sergeant Cummings testified that she spoke with Officer Person A that same day, and asked her if what she had told Officer Dyal was true. Officer Person A responded that it was true that Respondent had hit her, and she showed the sergeant the photograph on her phone of the scratch mark to her cheek. Officer Person A, who was upset and crying, also spoke about the incident where her ribs were injured; she clarified that she did not really fall in the tub, and that Respondent had actually kicked her in the ribs. The sergeant did not see any scratches on Officer Person A's back, or any other visible injuries. (Tr. 203-205, 208) Sergeant Cummings also heard Officer Person A mention to another officer that she had hit Respondent in the elbow with an object; the sergeant could not recall with certainty the type of weapon mentioned, but believed Officer Person A said it was an axe. (Tr. 207, 209, 214)

Respondent testified regarding the first incident. Officer Person A was intoxicated, and fell on the steps as they were leaving a restaurant. He helped her to the driver's seat of her jeep, and went to get supplies to clean her wound. On his return, Respondent told Officer Person A that she should have waited for him to walk down the steps, which angered her. The two of them began yelling at each other inside the car. Respondent stated that he took his firearm off his waistband, unloaded and disassembled it, and placed it into the glove compartment for safety reasons and out of concern for Officer Person A; he explained

that since she and a former husband (a police officer) had once been accused of turning their guns on each other during an argument, Respondent was careful to disassemble his gun whenever he and she were involved in an altercation so that she wouldn't feel threatened. Respondent insisted he did not point his gun at Officer Person A or himself. (Tr. 255-262, 325-331) Respondent also noted that a civilian knocked on the car window during the argument and asked if everyone was ok; Respondent told him yes, and the civilian walked off. (Tr. 263) They then drove to her home without further incident. (Tr. 264)

Regarding the second incident, Respondent testified that he and Officer Person A argued in her home, she was intoxicated, and so he left. Officer Person A then sent him angry texts, where she was "infuriated" with him for threatening to get back with his ex. Soon after, Officer Person A showed up at his home, banging on his door. Respondent let her inside, and their arguing turned physical as Officer Person A repeatedly tried to punch him. They wrestled to the couch, with Officer Person A on top. Respondent claimed he shoved her in the ribs with his right hand, pushing forward with his palms out in order to get her off of him. He denied ever kicking Officer Person A in the ribs. (Tr. 277-284, 335-336, 339, 341)

According to Respondent, as they continued to argue, Officer Person A picked up an axe that he kept in his apartment and threw it in his direction, which he blocked with his arms. The axe was fully covered in its sheath, and did no damage to him. He picked up the axe, took it out of its sheath, and told her it would be more effective as a weapon this way. As he was talking to Officer Person A and gesturing with his hands, he accidentally cut himself with the axe near his left elbow. Respondent went to the emergency room and

received stitches, leaving a one-inch scar near his elbow which he displayed in court. (Tr. 286-294, 337-338) Photographs of the axe (Resp.'s Ex. B and E) were admitted into evidence. Officer Person A later called to apologize to Respondent for coming to his home. (Tr. 296)

Respondent testified that the third incident began when they argued in his home over his broken PlayStation, which prevented them from watching a movie. Officer Person A had been drinking, and he asked her to leave. As he was leading her to the door, she punched him, grazing his face. Respondent extended his arm and placed his hand on Officer Person A's face in an effort to prevent her from hitting him; he acknowledged he may have inadvertently scratched her while doing this, but insisted he did not slap, punch or kick Officer Person A, and did not grab her by the throat. Things then settled down, and they went together to her place to watch television. (Tr. 296-303, 342-345)

Regarding Specification 4, Respondent denied making any such call to Officer Person A, from a payphone or otherwise. He maintained that he did not tell her what to say in her Department interview. He did admit to sending her the text regarding the axe incident (Dept. Ex. 2), claiming that he was telling Officer Person A he saved her by not reporting her since she still believed that she had cut him with the axe. Also, he was warning her that this should be a wake-up call to her to stay out of trouble. (Tr. 313-316, 346)

Officer Mechea Medine testified as a character witness for Respondent. She stated that she was in a "loving, caring relationship" with Respondent from 2007 to 2013; they lived with each other for two of those years, and had a child together. However, she was shocked to learn that he was cheating on her, and they went their separate ways. (Tr.

220-221, 227, 234) According to Officer Medine, Respondent was never abusive or physical with her, and she never felt threatened by him. From her observations when they were out with other people in the community, everyone seemed to like Respondent and believed he had a peaceful nature. (Tr. 222 224, 238) Officer Medine also testified that she socialized with Person B, an ex-girlfriend of Respondent's, who never said that Respondent was violent toward her or raised any concerns. (Tr. 225) Officer Medine acknowledged that her child support would be jeopardized if Respondent were to lose his job in connection with this case, but insisted she wasn't lying for him at trial. (Tr. 238, 246)

Christine Viola-Golbig, a downstairs neighbor of Respondent's, also testified on his behalf. She stated that Respondent was a very good neighbor, whom she described as quiet, polite, friendly, and nice to her kids. Ms. Viola Golbig recalled seeing Officer Person A once or twice at their building. On one such occasion a couple of years ago, she observed Officer Person A banging on their outside door, shouting and yelling for Respondent to let her in until Respondent appeared. Officer Person A seemed "erratic, aggressive and angry." Respondent, in contrast, appeared "very calm." He asked Officer Person A to please stop banging and to please calm down. Ms. Viola-Golbig, after she left, heard a little more yelling from Officer Person A but then things quieted down. (Tr. 375- 378)

Just before closing arguments, counsel for Respondent presented several texts his client had received from Officer Person A two days after she testified at trial; the Advocate confirmed their authenticity. In these texts, they begin by discussing possibly meeting up so Respondent can see their daughter. Officer Person A asks if he wants to see her too, and

he responds that he wouldn't mind seeing her as well. Later in the exchange, Officer Person A writes provocatively about riding a motorcycle with Respondent, and then adds that she thinks every day about riding him. They each lament that it's sad that they can't do that now, and Officer Person A states that she was mad at herself in court because Respondent looked so hot and she just wanted to rip his suit off and have sex with him. They each admitted they tried not to look at each other as she was testifying, but couldn't help themselves. They discuss her clothing, including her under garments, and she sends him a photograph of her outfit. Officer Person A writes how after her testimony they hustled her out of the court room, probably because they knew she would jump him and rip his clothes off, and then they would realize this is all a waste of time. Later, she invites Respondent over to sleep with her. (Tr. 385-392)

Both sides agree that the resolution of this case turns on the credibility of the witnesses. To be sure, there are multiple credibility issues connected with Officer Person A. She had a drinking problem during the time in question, and apparently was intoxicated for each of the incidents covered by the first three specifications. She was initially incorrect on her estimation of the date of the first incident. She made no outcry until after the third alleged incident. Two days after her testimony, she sent a series of sexually provocative texts to Respondent, giving no indication that she had any fear of him.

Nevertheless, Officer Person A was detailed and consistent in her testimony on the witness stand, and there was some corroboration for her accounts. Respondent, who also presented well as a witness, himself corroborated that there was some form of altercation on each of the three occasions described by Officer Person A. Though he provided

alternative explanations for what occurred, his explanations were, at times, highly questionable

The first specification alleges that Respondent pointed his firearm at Officer Person A inside her vehicle. Officer Person A was detailed in describing how Respondent was upset with her for not holding hands, which he believed might have prevented her from falling on the stairs. In the middle of their argument, Respondent pointed his gun at her and threatened to kill both of them. Moments later he apologized and assured her he would go to therapy, so she didn't report the incident at the time.

Respondent denied that he pointed his firearm at Officer Person A, but in many ways he corroborated her account of what occurred that day: she did fall on the stairs as they left the restaurant, they did argue inside her car, and most significantly, he did remove his gun during this argument. Where they differed was Respondent's claim that he took out his gun to disassemble it, because he was sensitive to prior bad experiences Officer Person A had in previous relationships. This self-serving explanation by Respondent is not particularly plausible under these circumstances. It is unlikely that Respondent, a trained police officer, would pull out his weapon for the reason described, rather than keep it safely holstered. Indeed, the very act of removing the weapon, in tight quarters, in the middle of a heated argument with an intoxicated person, would by itself enflame the situation, not defuse it. I credit Officer Person A's detailed account of what transpired, reject Respondent's implausible explanation, and find Respondent guilty of Specification 1.

Specification 2 alleges that Respondent kicked Officer Person A in her ribs. Even though there is no specific charge connected to what happened with the axe during this second incident, Counsel for Respondent questioned Officer Person A's overall credibility

based on her description of what occurred with the axe. Essentially, Officer Person A testified that she picked up the axe and threw it in Respondent's direction, striking his arm and causing bleeding. Respondent, on the other hand, claimed that he safely blocked the axe with his arms, then accidentally cut himself with the axe as he was gesturing with his hands. This tribunal is not persuaded that Respondent's version is any more reliable than Officer Person A's. Indeed, the text sent by Respondent to Officer Person A, where he reminds her that she's lucky she didn't get arrested for felony assault, provides significant corroboration that the cut to Respondent's elbow occurred as Officer Person A described. Respondent's explanation, that he only texted that because Officer Person A still erroneously believed that she had cut him, is far-fetched.

As for the rest of the incident, Officer Person A once again was detailed in her account, testifying that after an earlier argument, she appeared at Respondent's home. Inside, they continued to argue, and the altercation became physical. Officer Person A testified that during the struggle, Respondent grabbed her by the throat, threw her down, and kicked her in the ribs. Respondent, meanwhile, again essentially corroborated much of Officer Person A's version of events. He agreed that there was an earlier argument including an exchange of text messages, and the dispute continued when Officer Person A showed up at Respondent's home. However, Respondent denied kicking Officer Person A in the ribs, claiming that any injury he caused instead occurred when he shoved her off of him in self defense.

Counsel for Respondent correctly points out that the diagnosis in the hospital records was a rib contusion rather than a rib fracture. However, even this injury is more consistent with a kick to the ribs rather than a shove. Moreover, the fact that four days

after the incident Officer Person A still needed to go to the hospital with what she felt was “a crack in her ribs” suggests a greater severity than that which would have been caused by a mere shove. Further, when an emotional Officer Person A was questioned unexpectedly by Sergeant Cummings on November 20, 2014, she candidly told the sergeant that Respondent had kicked her in the ribs, providing further corroboration of Officer Person A’s trial testimony. The record has established, by a preponderance of the credible evidence, that Respondent wrongfully kicked Officer Person A in her ribs, and I find him guilty of Specification 2.

Specification 3 alleges that Respondent pushed, grabbed, and slapped Officer Person A’s face, and grabbed her arm. Both Respondent and Officer Person A agreed that an argument started when they were unable to watch a movie on the broken PlayStation, but they disagreed about what happened next. According to Officer Person A, Respondent told her to leave and pushed her around. When she protested, that’s when he got physical with her, and her face was scratched during the altercation. Respondent, though, testified that as he was escorting Officer Person A out, she grazed his face with a punch. He grabbed her face to hold her back from hitting him further, and may have inadvertently scratched her face in the process.

On the one hand, nine days later Officer Person A did tell Officer Dyal and Sergeant Cummings that Respondent had hit her during this incident. However, by then the scratch mark, which Officer Person A conceded was superficial, had already disappeared, so she showed the sergeant a photograph on her phone. Further, in her Department interview on March 30, 2015, Officer Person A provided a different sequence of events than what she testified to at trial. Officer Person A also acknowledged that she was angry with

Respondent for cheating on her, and for not spending enough time with their daughter. In light of Officer Person A's admitted hostility toward Respondent, her intoxicated condition, the inconsistency in her account, and the minimal nature of the scratch wound, this tribunal finds that Respondent's explanation of how he acted in self-defense to be plausible. The record has not established, by a preponderance of the credible evidence, that Respondent acted wrongfully toward Officer Person A during this encounter, and I find him not guilty of Specification 3.

Specification 4 alleges that Respondent wrongfully tried to influence Officer Person A's statement to the Department. Officer Person A testified that Respondent called her from a pay phone and instructed her to tell the Department first, that she missed him with the axe and he cut himself, and second, that during the first incident he displayed his firearm, racked the slide, and then holstered the gun. Respondent denied making any such call.

Counsel for Respondent correctly notes that there are no phone records to verify this allegation, or any other corroboration. There was specific information regarding the date of the alleged call and even a time frame for when it allegedly was made, yet no phone records were produced to confirm that officer Person A received a call from a pay phone that day. Instead, the Department relies solely on the word of Officer Person A to substantiate this claim, but she did not demonstrate enough reliability as a witness to sustain this count by herself. The record has established that Officer Person A was extremely inconsistent in her attitude toward Respondent, at times jealous, hostile, and aggressive toward him, while as recently as June 27 entertaining thoughts of having sex with Respondent while she was on the witness stand testifying against him. Coupled

with the incongruity in Officer Person A's account, this tribunal is not prepared to accept her claim regarding Respondent's alleged phone call in the absence of any corroboration. Further, when Officer Person A had her Department interview later that same day, she made no mention of this alleged call, even though she otherwise implicated him at the interview. Taking all of this into account, the record has not established, by a preponderance of the credible evidence, that Respondent improperly attempted to influence Officer Person A's statement, and I find him not guilty of Specification 4.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 8, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary history.

Respondent has been found guilty of two of the four specifications. Under the first count, he pointed his firearm at Officer Person A as they argued in her car. Although he quickly put the gun away and apologized, the act of even pulling out the gun in such circumstances was extremely reckless, and there must be some accountability. Regarding the second incident, this tribunal is mindful that an angry, intoxicated Officer Person A initiated the confrontation. But again, Respondent's act of kicking her in the ribs was not an appropriate response to the situation.

It is unclear what type of relationship the two of them will have moving forward, but what is clear is that they would benefit from extensive counseling. One of the more

troubling aspects of the text communication between Respondent and Officer Person A two days after she testified is how it reveals that neither of them seems to fully grasp the serious nature of this matter.

In *Disciplinary Case No.* [REDACTED] a 10-year officer with one prior adjudication for a domestic incident, negotiated a plea of 30 pre trial suspension days and one-year dismissal probation for engaging in a verbal dispute that escalated into a physical altercation [REDACTED]. In *Disciplinary Case No.* [REDACTED] [REDACTED] a 15 year sergeant with two prior adjudications negotiated a penalty of 9 vacation days, 36 suspension days already served, cooperation with counseling, and one-year dismissal probation for engaging in a physical altercation [REDACTED] and failing to safeguard his firearm. And in *Disciplinary Case No.* [REDACTED] an 8-year officer with one prior adjudication negotiated a penalty of 34 days previously served, counseling, and one-year dismissal probation for grabbing the throat [REDACTED] [REDACTED], leading her to throw a hammer at him, after which he slapped, punched, and kicked her. This tribunal feels that the penalties in these cases are in line with what is appropriate in this situation.

Taking into account the totality of circumstances and issues in this case, I recommend that Respondent be **DISMISSED** from the New York City Police Department, but that his dismissal be held in abeyance for one (1) year, pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings, and further, that Respondent forfeit thirty-two (32) days already served on pretrial suspension without pay, as an appropriate penalty.

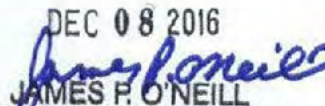
Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

DEC 08 2016



JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER TIMI TOMACRUZ
TAX REGISTRY NO. 947545
DISCIPLINARY CASE NO. 2014-12722

Respondent was appointed to the Department on July 8, 2008. His last three annual evaluations were 4.0 overall ratings of "Highly Competent" in 2013, 2014 and 2015. He has no medals [REDACTED]

Respondent has no prior disciplinary history. He was suspended in connection with the instant case on November 20, 2014. On December 22, 2014, he was restored to modified duty. He was also placed on Level 2 Disciplinary Monitoring on March 17, 2015 as a result of the subject Charges and Specifications. The monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials